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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

DIVISION ONE

Edward Blum, Nancy Blum, Plaintiffs, v. Samuel Duran Jr., DDS; Medical Protective Company, Defendants.	CV-13-00966-PHX-GMS **DEFENDANT MEDICAL PROTECTIVE COMPANY'S MOTION TO STAY RULING ON MOTION TO DISMISS UNTIL DEADLINE FOR FILING SECOND AMENDED COMPLAINT** (Oral Argument Requested)

Defendant Medical Protective Company ("MedPro"), hereby requests this Court to stay the time for the Court's ruling on the pending Motion to Dismiss to allow for Plaintiffs to either formally file their Second Amended Complaint or to proceed on their prior filed Complaint. Defendant also requests that the pending Motion to Dismiss also be applied to whatever complaint is controlling after the court-ordered deadline for the Second Amended Complaint (*see* Order, Doc. 16), regardless of the timing of the filing of the Motion to Dismiss.

On June 17, 2013, Plaintiffs served MedPro with their Second Amended Complaint. It has just come to MedPro's attention, pursuant to the Court's July 12th

Order, that the Second Amended Complaint against MedPro was never actually filed with the Court, although it was served on MedPro.[1]

As the Motion to Dismiss discussed in Footnotes 1 and 2, MedPro was aware of the various complaints served on MedPro and specifically noted that each complaint served on MedPro contained identical allegations against MedPro. Therefore, while the arguments laid out in the Motion to Dismiss and Plaintiff's Response would apply to any and all Complaints served on MedPro, including the Second Amended Complaint should Plaintiffs choose to file it by July 26, 2013, MedPro recognizes that the Court cannot dismiss a Complaint not yet filed.

In the interests of not wasting any more time and money for all parties, MedPro requests this Court stay its ruling on the Motion to Dismiss until the time elapses for Plaintiffs to file their Second Amended Complaint. MedPro calculates that deadline to be July 26, 2013. Therefore, by that date, it will be clear what Complaint against MedPro is actually controlling in this case and the Motion to Dismiss can then proceed against whatever the applicable complaint is. Otherwise, the entire set of Motion to Dismiss pleadings will have to be again re-filed after July 26th, even though the arguments and law will be exactly the same. Holding off on ruling on the Motion to Dismiss does not prejudice Plaintiffs and MedPro should not have to incur more fees and costs to re-file these motions because Plaintiffs served a complaint on MedPro that they never formally filed.

Therefore, MedPro requests that this Court stay ruling on the Motion to Dismiss until such time that it is determined which Complaint Plaintiff is operating under, which would be sometime after July 26, 2013, and to apply the current Motion to Dismiss to whatever Complaint is controlling at that time.

[1] Undersigned counsel was on vacation all last week when the Order, filed July 15, 2013, was received by undersigned's office or this Motion would have been filed sooner.

RESPECTFULLY SUBMITTED this 23rd day of July, 2013.

BROENING OBERG WOODS & WILSON, P.C.

By /s/ Katherine M. Corcoran

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

No CM/ECF registrants

A courtesy copy with a copy of the Notice of Electronic filing was also **mailed** to HONORABLE G. Murray Snow on this same date at the following address:

HONORABLE G. Murray Snow
United States District Court
Sandra Day O'Connor U.S. Courthouse, Suite 622
401 West Washington Street, SPC 80
Phoenix, AZ 85003

A copy of this document was **mailed** via First Class Mail on July 8, 2013, to pro se Plaintiff at the following address:

Edward Blum
Nancy Blum
P.O. Box 1829
Sun City, Arizona 85372

/s/ Jane E. Stimbert